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January 31, 2006

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Committee for Purchase From
People Who Are Blind or Severely Disabled
1421 Jefferson Davis Highway
Jefferson Plaza 2, Suite 10800
Arlington, VA 22202-3529
Attn: Stephanie Hillmon, Assistant General Counsel

RE: Nonprofit Agency Governance and Executive Compensation advanced
notice of proposed rulemaking, *Federal Register*, December 16, 2005.

Dear Ms. Hillmon:

Independent Sector, a national, nonprofit organization with over 550 member charities, foundations, and corporate philanthropy programs, welcomes the opportunity to comment on the recent proposals of the Committee for Purchase From People Who Are Blind or Severely Disabled regarding governance and compensation standards for nonprofit agencies that participate in the Javits-Wagner-O'Day (JWOD) Program. IS represents tens of thousands of charitable groups, including many organizations that participate in JWOD programs, serving every cause in every region of the country, as well as millions of donors and volunteers. One of our members, the International Association of Jewish Vocation Services, specifically joins us in these comments.

Independent Sector strongly supports the Committee's goal of improved governance of nonprofit organizations and has worked since its inception to assist its member organizations to meet the highest standards of ethical practice, accountability and effectiveness. In October 2004, IS convened the Panel on the Nonprofit Sector at the encouragement of the leaders of the U.S. Senate Committee on Finance to examine and recommend improvements to the oversight and governance of charitable organizations. The Panel's final report to Congress and the Nonprofit Sector (available online at <http://www.nonprofitpanel.org/final/>), reflecting the advice of thousands of nonprofit organization leaders and experts in the field, was released in June, 2005. It proposes a carefully integrated package of more than 120 actions to be taken by charitable organizations, Congress, and the Internal Revenue Service, which together would strengthen the sector's transparency, governance, and accountability. In preparing these comments, we have drawn upon the findings of the Panel and the experience and expertise of Independent Sector and many of its members.

While we concur with the Committee's intention of ensuring that participants in the JWOD program meet the highest standards of governance and accountability, we have raised serious concerns about both the particular criteria for assessing governance performance proposed by the Committee and the process that would be necessary to implement to review individual agencies' performance against these criteria. Independent Sector will be working with the Panel on the Nonprofit Sector throughout the coming year to evaluate systems of self-regulation for various types of charitable organizations and the particular standards and procedures those systems use to assess the performance of individual organizations. We would be happy to share the findings of that work with the Committee when it is completed in late 2006 or early 2007.

Qualified Agencies Have Good Governance Practices

1. Are these criteria comprehensive and inclusive enough to effectively evaluate that a nonprofit agency demonstrates good governance practices and should be deemed qualified to participate in the JWOD program?

Some of the criteria mirror requirements already in place under federal law for most charitable organizations, while others reflect "good practices" that are advisable for most, but not necessarily all, charitable organizations. Still others represent practices that are by no means universally held to be "best practices" for even a majority of charitable organizations. We have provided our comments on the specific recommendations below.

Criteria 1, 3, 4 and 5: We agree that every board of directors, as a matter of recommended practice, should review its board size periodically to determine the most appropriate size and the skills necessary to ensure effective governance and to meet the organization's goals and objectives. There is currently no consensus among experts in nonprofit board governance as to the particular skill requirements, the ideal size, the value of term limits, and the appropriate methods for including representation from communities served by the organization for every board of directors. Rather, each individual organization's board must determine the size and structure that is most effective and desirable to meet its organization's needs. Therefore, we do not recommend that criteria 1, 3, 4, and 5 should be included as "requirements" for JWOD participants. While these are all areas that deserve thoughtful consideration by every board of directors, it would not be appropriate for the Committee to substitute its judgment for that of an individual organization's board of directors as to the appropriate size, composition, and structure of that organization's board.

Criteria 2 and 10: No charitable organization should permit a board member, employee or volunteer to coerce, manipulate, mislead or fraudulently influence the agencies' audit process or any other aspect of the organization's administrative or program activities. Similarly, charitable organizations must guard against situations where a board or staff member's personal interests compete with the interests of the organization. While there are federal and state legal strictures that prohibit some transactions in which a board or staff member receives improper benefits, we agree that in both these areas charitable organizations should have clear policies in place, with procedures to enforce those policies effectively.

Criterion 6: By far the majority of board members of charitable organizations currently serve without pay, but there can be valid circumstances where, due to the nature, time or professional competencies involved in the work expected, an organization may determine that it is necessary to compensate some or all board members. Furthermore, it is permissible for charitable organizations to purchase services or goods from board members at or below fair market rates, subject to restrictions under section 4958 of the Internal Revenue Code. We do not recommend, therefore, that the Committee include this criterion as a requirement for JWOD participants.

Criteria 7, 8 and 14: One of the most important responsibilities of a board of directors is hiring, reviewing, and maintaining or, when circumstances require, dismissing the chief staff executive. We agree that the full board should be aware of the performance review and compensation of the chief staff executive, even when it chooses to delegate responsibility for carrying out those functions to a designated committee. We agree that boards of directors should follow the “rebuttable presumption” procedures outlined in IRS regulations under section 4958 of the tax code in establishing the compensation of the chief executive.

We agree that it is good practice for the board of directors to periodically review the organization’s overall compensation structure, but we disagree that the board of directors should review or approve the compensation of individual staff members. The chief staff executive bears the responsibility for determining the compensation and reviewing the performance of other staff members based on broad policies established by the board of directors. We would recommend that the board be advised, and at its own discretion, approve the salaries of any individual staff member if the compensation provided exceeds that provided to the chief staff executive.

Criteria 9, 11 and 12: One of the primary duties of the board of directors of a charitable organization is to ensure that all financial matters of the organization are conducted legally, ethically, and in accordance with proper accounting rules. Having financial statements prepared and audited in accordance with generally accepted audit procedures is currently required of organizations that receive federal awards of \$500,000 or more. Agencies with annual revenues of \$100,000 or more that wish to participate in the Combined Federal Campaign must also have annual financial audits. Many boards choose, and indeed some are required by law to delegate responsibility for overseeing the audit process to a separate committee. We agree that in such cases the full board should be informed of the findings of the audit process, including any plans to correct problems identified in the auditor’s management letter.

We recognize that financial audits can be a substantial expense for many charitable organizations, depending on the size, scale and complexity of the organization’s operations. In requiring audited financial reports of all JWOD participants (criteria 11), the Committee may be inadvertently excluding small organizations from participation in the program. We agree that JWOD participants should include at least one (and preferably more) individual who meets the Committee’s definition of a “financial expert” serving on either their audit committee or their board of directors, but that choice ought to be left to the individual organization’s board.

We also concur that nonprofit agencies should periodically conduct a review to ensure that they are in compliance with existing statutory, regulatory and financial reporting requirements, but the

nature and extent of such a review may vary substantially based on the size, resources and complexity of the organization.

Criterion 13: Charitable organizations are currently required by law to make available to the public the annual information returns (Form 990) they file with the Internal Revenue Service, unless they meet certain specific criteria.¹ These returns include all of the information requested by the Committee. This criteria, therefore, seems redundant of current legal requirements.

2. Are there additional criteria that should be used, or substituted for the above, to evaluate evidence of good governance practices by nonprofit agencies in the Program?

All JWOD participating agencies should be expected to comply fully with all applicable federal, state and local laws and regulations governing charitable nonprofits as well as service agencies in their particular fields of service. Many JWOD participants are also accredited by outside agencies, such as the Commission on Accreditation of Rehabilitation Facilities and the Council on Accreditation, or they may be required to abide by standards established by their parent organizations, such as Goodwill Industries, Catholic Charities, or Lutheran Services in America. The Committee should not duplicate these efforts, but may wish to consider whether it wishes to establish partnerships with relevant accrediting or other self-regulatory systems to strengthen governance practices of JWOD participating agencies.

3. Should accreditation by one or more state or national organizations be recognized as evidence of a nonprofit agency adhering to good governance practices without further review by the Committee?

As noted above, a number of JWOD agencies are accredited by outside bodies and some of those accreditation systems evaluate the governance and overall management practices of an agency, in addition to its professional credentials and service parameters. We would support efforts to recognize responsible accreditation systems as one measure of an agency's qualifications to administer a JWOD program, rather than instituting a separate, duplicative system that would be costly for both the Committee and participating agencies to administer. We would, however, caution that there is significant variance in accreditation and other self-regulatory systems, and not all may be relevant to the goals and objectives of the JWOD program. This area would require further study before a new program could be implemented effectively by the Committee.

4. Should different benchmarks be used for nonprofit agencies that are state, county or local government agencies, or should they be exempt from any Committee regulation in this area?

Government agencies are generally subject to unique laws and regulations governing their administration, and this area also deserves further study before new requirements are implemented by the Committee.

¹ Organizations other than private foundations with annual gross receipts of \$25,000 or less, houses of worship and specific related institutions, specified governmental instrumentalities, and other organizations relieved of this requirement by authority of the IRS are excluded from this requirement.

5. Should the size and/or annual revenue of the nonprofit agency be a factor or factors in assessing appropriate governance practices?

The size and annual revenue, as well as the geographic location and the overall service programs of an agency, are clearly factors in determining the most appropriate governance structure for that agency. It may also affect an agency's ability to contract with outside auditors to assess its compliance with financial standards and other statutory requirements. Our assessment earlier in this letter of the individual criteria proposed by the Committee reflects some of our concerns about establishing these criteria as requirements for all JWOD participants.

6. What is the best way to ensure that only qualified central nonprofit agencies and nonprofit agencies, with an internal structure that minimizes opportunities for impropriety, participate in the JWOD program?

The Committee should encourage full transparency by participating agencies about their programs, activities and finances, while providing sufficient flexibility to accommodate the wide range of resources and capabilities of those agencies. Maintaining clear application and reporting procedures for JWOD participants, with careful agency review, provides a strong beginning to ensure that participants adhere to the requirements of the program. We would also encourage partnerships with other federal government agencies, as well as private sector organizations, involved in self-regulation of charitable organizations in the health and human service areas.

7. What steps will the nonprofit agencies and central nonprofit agencies need to take to avoid conflicts of interest among its board members?

Boards of directors and staff have a responsibility to act in the best interests of the charitable organization they serve and must put their duty to the organization before their individual and private interests when overseeing the organization's business and resolving problems facing the organization. Every organization should adopt and enforce a conflict of interest policy consistent with the laws of its state and tailored to its specific organizational needs and characteristics to address situations where organizational and private interests of board and staff members intersect. Every agency should also have in place clear policies and procedures that encourage individuals to come forward with credible information on illegal practices or violations of adopted policies of the organization and that protect individuals who make such reports from retaliation.

8. What steps will the nonprofit agencies and central nonprofit agencies have to take to demonstrate financial responsibility?

Agencies should provide all financial reports and audited financial statements as required by law or regulations of the Committee or other funding agency. The CEO, CFO, or the highest ranking officer of the organization should certify to the completeness and accuracy of both financial and program reports submitted to the Committee.

Effect of Executive Compensation on Fair Market Price Determinations

Questions 1-3 on Executive Compensation

Determining the appropriate compensation for the CEO/President of an agency is a complex process that involves an assessment of the responsibilities and requirements of the position, what constitutes “comparable” positions and the compensation packages provided to individuals in comparable positions, and the particular skills and qualifications of the individual in the position. It is our understanding that the Committee’s existing pricing guidelines tie contract prices to prices paid in the commercial market. It is not clear how the compensation paid to the CEO or other staff members would influence the fair market price of services or products offered by an agency. We believe that the fair market price should be determined by a thorough assessment of the price paid for objects or services of similar value and quality, rather than the salaries paid to employees of the agency.

4. Should receipt of documentation to support a “rebuttable presumption of reasonableness” serve to demonstrate that executive compensation does not by itself influence a proposed fair market price or any adjustment thereto?

It is reasonable for the Committee to request full documentation of how an agency arrived at its proposed fair market prices, and if staff compensation is a factor in computing such prices, the agency should be prepared to explain how it determined the appropriateness of compensation.

5. To what extent should there be a relationship between the pay and compensation of line workers and highly compensated individuals?

Agencies should be expected to abide by applicable federal, state and local laws regarding compensation and treatment of workers. There is no common standard for assessing the appropriate relationship between the pay and compensation of line workers and highly compensated individuals in all agencies, whether nonprofit or for-profit.

6. At what point would be appropriate to begin a review of an executive compensation package even if the proposed price for a product or service would fall within a range that it could be considered as a fair market price?

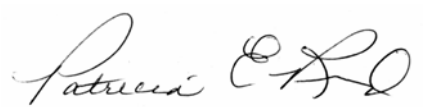
As per our earlier comment, we do not believe that a review of executive compensation is relevant to determinations of what constitutes a fair market price for a given product or service.

7. What approaches are available to identify and monitor nonprofit agencies executive compensation that would provide such information to the Committee routinely but without placing an undue burden on agencies?

All charitable organizations must report the compensation paid to its CEO and the five highest compensated employees and contractors on their annual information returns (Form 990) that are available to the public. If compensation is deemed relevant to establishing a fair market price, the Committee may also request such information on its application forms.

Thank you again for the opportunity to provide input to the Committee on these important issues. If you have any questions or need further information, please feel free to contact me at 202-467-6147.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia Read" followed by a stylized monogram or set of initials.

Patricia Read
Senior Vice President, Public Policy